

1 J. Noah Hagey, Esq. (SBN: 262331)
2 hagey@braunhagey.com
3 Matthew Borden, Esq. (SBN: 214323)
4 borden@braunhagey.com
5 Ellen V. Leonida, Esq. (SBN: 184194)
6 leonida@braunhagey.com
7 David H. Kwasniewski, Esq. (SBN: 281985)
8 kwasniewski@braunhagey.com
9 Tracy O. Zinsou, Esq. (SBN: 295458)
10 zinsou@braunhagey.com
11 BRAUNHAGEY & BORDEN LLP
12 351 California Street, 10th Floor
13 San Francisco, CA 94104
14 Telephone: (415) 599-0210
15 Facsimile: (415) 276-1808

16 *Attorneys for Defendant*
17 *BA Sports Nutrition, LLC*

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19 **UNITED STATES DISTRICT COURT**
20 **NORTHERN DISTRICT OF CALIFORNIA**
21 **SAN FRANCISCO DIVISION**
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MARC SILVER, ALEXANDER HILL,
individually and on behalf of all others
similarly situated,

Plaintiffs,

v.

BA SPORTS NUTRITION, LLC,

Defendant.

Case No: 3:20-cv-00633-SI

**DECLARATION OF MATTHEW
BORDEN IN SUPPORT OF DEFENDANT
BA SPORTS NUTRITION, LLC'S
RESPONSE TO PLAINTIFFS'
UNAUTHORIZED FILING (DKT. 155)**

Judge: Hon. Susan Illston
Ctrm.: 1, 17th Floor

Complaint filed: January 28, 2020

1 I, Matthew Borden, declare:

2 1. I am licensed to practice before this Court and a partner at BraunHagey & Borden
3 LLP, counsel of record for Defendant BA Sports Nutrition, LLC (“BodyArmor”). I make this
4 declaration based on personal knowledge. If called as a witness, I could and would testify
5 competently to the facts stated herein.

6 2. Prior to filing the document entitled “Plaintiffs’ Statement Pursuant to Standing
7 Order No. 3” (Dkt. 155), Plaintiffs did not attempt to meet and confer with BodyArmor. Nor did
8 Plaintiffs make any attempt to prepare a joint statement.

9 3. On February 4, 2022, the parties participated in a conference call with the Special
10 Master regarding the Rule 30(b)(6) deposition. At the conference, I asked that the deposition be
11 postponed to give the Court time to rule on BodyArmor’s pending motion for summary judgment.
12 The Special Master stated that he would not postpone the deposition unless Plaintiffs agreed.
13 Plaintiffs then agreed to reschedule the deposition for April 13, 2022, in the hopes that a ruling on
14 BodyArmor’s pending motion for summary judgment would issue before then.

15 4. On April 5, 2022, Plaintiffs cancelled the Rule 30(b)(6) deposition set for April 13,
16 and asked to reschedule it. BodyArmor agreed to reschedule it, and a new date has been set.

17 5. Attached as **Exhibit 1** is a true and correct copy of an April 13, 2022 email from the
18 Special Master to the parties regarding the scheduling of depositions.

19 6. Attached as **Exhibit 2** is a true and correct copy of a February 3, 2022 email from
20 Plaintiffs to BodyArmor regarding the Rule 30(b)(6) deposition.

21 7. Attached as **Exhibit 3** is a true and correct copy of an April 13, 2022 email from
22 Plaintiffs to the Special Master and a “draft statement” which Plaintiffs attached to the email and
23 asked the Special Master to read.

24 I declare under penalty of perjury under the laws of the United States that the foregoing is
25 true and correct.

26 Dated: April 25, 2022

Respectfully Submitted,

27 By: /s/ Matthew Borden

28 Matthew Borden